



UNITED STATES MARINE CORPS
MARINE CORPS SYSTEMS COMMAND
2200 LESTER STREET
QUANTICO, VIRGINIA 22134-5010

IN REPLY REFER TO:

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DON-USMC-2018-011707

14 Dec 18

SMITH PACHTER MCWHORTER
MR. JONATHAN D. SHAFFER
8000 TOWERS CRESCENT DRIVE
SUITE 900
TYSONS CORNER VA 22182

SUBJECT: FOIA DON-USMC-2018-011707

Dear Mr. Shaffer:

This responds to your FOIA request dated September 21, 2018, which requests a copy of:

- "1. Contract M67854-18-R-3007, including all modifications, changes, or amendments;
2. All communications from or to Riptide regarding the task order issued under Solicitation M67854-18-R-3007;
3. All documents related to Riptide's performance of the task order issued under Solicitation M67854-18-R-3007;
4. All documents related to the award of the task order issued under Solicitation M67854-18-R-3007;
5. All documents related to the evaluation of the Riptide and MES proposals submitted in response to Solicitation M67854-18-R-3007;
6. All documents related to offeror presentations to the agency under Solicitation M67854-18-R-3007."

A releasable copy of the requested documents is enclosed.

Your request is hereby partially denied. After a careful review of the requested documents, this agency has determined that portions of the responsive documents are privileged from disclosure in pursuant to FOIA Exemptions 5 U.S.C. § 552(b)(3); 5 U.S.C. § 552(b)(4) and 5 U.S.C. § 552(b)(6) and must be withheld in order to protect the submitter's proprietary and/or financial interests.

Specifically, FOIA Exemption 5 U.S.C. § 552(b)(3) precludes disclosure of an unsuccessful offeror's information if disclosure is prohibited by another statute. It is important to

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note that the Competition In Contracting Act of 1984 (CICA) and 10 U.S.C. § 2305(g), preclude the release of proposals and information contained within said proposals. In fact, CICA provides that "a proposal in the possession or control of [a military department] may not be made available to any person under section 552 of title 5." Id. Furthermore, 10 U.S.C. § 130 prohibits the release of certain "technical data with military or space application in the possession of, or under the control of, the Department of Defense."

The Trade Secrets Act, 18 U.S.C.A. § 1905 (West Supp. 1999) ("TSA"), also prevents release of proposals. Under this statute, officers and employees of the United States or any U.S. agency or department, are prohibited from divulging or disclosing information that relates to trade secrets, operations, style of work, confidential data, amount or source of income, profits, or expenditures.

FOIA Exemption 5 U.S.C. § 552(b)(4) exempts from disclosure (i) voluntarily submitted commercial or financial information provided that the submitter does not "customarily" disclose the information to the public and provided that disclosure would be likely to interfere with the continued and full availability of the information to the government, or (ii) compelled information likely to cause substantial harm to the competitive position of the person from whom it was obtained and likely to impact on the government's ability to obtain reliable information in the future. See Critical Mass Energy Project v. NRC, 975 F2d 871, 879-80 (D.C. Cir. 1992), cert. denied, 113 S.Ct. 1579 (1993); National Parks & Conservation Ass'n v. Morton, 498 F2d 765, 766 (D.C. Cir. 1974); Canadian Commercial Corp. v. Dept. of Air Force, 514 F.3d 37 (D.C. Cir., 2008).

Finally, FOIA Exemption 5 U.S.C. § 552(b)(6) exempts disclosure of information that would constitute a clearly unwarranted invasion of personal privacy.

As of December 14, 2018, 17 hours of search and review (currently billed at \$48 per hour) have been expended during the processing of your request. Please remit a check or money order, payable to the Treasurer of the United States in the amount of **\$816.00** to: COMMANDER, ATTN LAW, MARCORSYSCOM, 2200 LESTER STREET, SUITE 120, QUANTICO VA 22134-5010.

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Because your request has been partially denied, you may consider this an adverse determination that may be appealed to the Assistant to the General Counsel (FOIA) at:

Department of the Navy
Office of the General Counsel
ATTN: FOIA Appeals Office
1000 Navy Pentagon Room 4E635
Washington DC 20350-1000

For consideration, the appeal must be received in that office within 90 days from the date of this letter. Attach a copy of this letter and a statement regarding why you believe an adequate search was not conducted. Your appeal letter should bear the notation "FREEDOM OF INFORMATION ACT APPEAL". Please provide a copy of any such appeal letter to the MARCORSYSCOM address above.

Any questions concerning this matter should be directed to Mrs. Bobbie Cave at (703) 432-3934 or bobbie.cave@usmc.mil.

Sincerely,

J. J. STOWER
Chief of Staff